APPEAL NO. 002291

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 24, 2000. The issues at the CCH were whether the appellant (claimant) had sustained a compensable injury on _____; whether the compensable injury extended to and included an injury to the cervical spine and left shoulder; and, whether the claimant had disability as a result of the compensable injury. The hearing officer determined that the claimant sustained a compensable left shoulder and left elbow injury, but that the compensable injury did not include or extend to an injury to the claimant's spine, and that the claimant had disability from December 7, 1999, continuing through the date of the CCH. The claimant appealed the adverse findings of fact that he did not sustain an injury to his cervical spine on _____, and that his neck problem was preexisting and not related to the compensable injury or aggravated by it. The respondent (carrier) replied that the evidence was sufficient to support the determination that the claimant did not sustain an injury to his cervical spine on _____, and urged affirmance. The findings as to whether the claimant sustained a compensable injury to his left shoulder and left elbow and that he had disability from December 7, 1999, through the date of the CCH were not appealed and have become final by operation of law.

DECISION

Affirmed.

The claimant testified that he worked for the employer on _____, as a locker-room attendant. He explained that his duties included the responsibility of cleaning members' golf shoes and replacing metal spikes for the new plastic spikes. The claimant stated that two sets of golf shoes took extra effort to remove the metal spikes because they had rusted to the bottom of the shoes and that as a result of this activity he felt pain in his neck and left shoulder under his shoulder blade. He explained that he felt uncomfortable for about a week before he sought medical treatment from Dr. D to help resolve the pain.

The claimant testified that he continued to work at his regular duties, including cleaning the locker room, bartending, waiting on tables and providing shoe shines, but no longer replaced spikes in members' golf shoes. The claimant stated that he continued at these activities until he was notified by the club manager during the middle of December 1999, that the country club had been sold and his services were no longer needed. The claimant explained that he had not returned to work as of the date of the CCH although he had applied to work at two other country clubs and a driving range and that his neck and shoulder pain had decreased. He stated that had he not been laid off he could have continued working at his job and had recently tried to return to work for the employer as a subcontractor.

The claimant admitted that he has arthritis in his spine and had previously sought treatment from Dr. D after a motor vehicle accident but denied any injury to his neck from the accident. He also acknowledged that he broke his left ankle but was able to walk around using a "boot" for about six weeks and this subsequent injury would not have kept him from working.

Medical records from Dr. D reflect that the claimant initially sought treatment on June 16, 1999, for complaints of left shoulder and elbow pain. On his intake history, the claimant circled as his area of pain origination the scapular area of his left shoulder. Dr. D diagnosed cervical radiculopathy, elbow bursitis and reduced range of motion in the shoulder. At the request of the Texas Worker's Compensation Commission (Commission), Dr. E, evaluated the claimant on February 8, 2000, and determined that the injury was limited to the left shoulder although the claimant had arthritis in his neck. Dr. B examined the claimant on April 12, 2000, and opined that the claimant did not sustain a neck injury on _____. Dr. W, who had been appointed by the Commission for purposes of determining the date of maximum medical improvement and impairment rating, indicated in his report of July 25, 2000, that the claimant's cervical complaints were preexisting and there was no evidence of cervical radiculopathy. He believed the injury was limited to the claimant's left shoulder.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). While a claimant's testimony alone may be sufficient to prove an injury, the testimony of a claimant is not conclusive but only raises a factual issue for the trier of fact. Texas Workers' Compensation Commission Appeal No. 91065, decided December 16, 1991. The trier of fact may believe all, part, or none of any witness's testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

In a case such as the one before us where both parties presented evidence on the disputed issues, the hearing officer must look at all of the relevant evidence to make factual determinations and the Appeals Panel must consider all of the relevant evidence to determine whether the factual determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 941291, decided November 8, 1994. An appeals level body is not a fact finder, and it does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact even if the evidence could support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied).

Only were we to conclude, which we do not in this case, that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be manifestly unjust would there be a sound basis to disturb those determinations. In re

King's Estate, 150 Tex. 662, 224 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Since we find the evidence sufficient to support the determinations of the hearing officer, we will not substitute our judgement for his. Texas Workers' Compensation Commission Appeal No. 94044, decided February 17, 1994.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge